

2/28/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 13
HWR

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re MBNA America Bank, National Association

Serial No. 75/372,369

Michael A. Grow of Arent Fox Kintner Plotkin & Kahn, PLLC
for MBNA America Bank, National Association.

Raul F. Cordova, Trademark Examining Attorney, Law Office
114 (Margaret Lee, Managing Attorney).

Before Cissel, Wendel and Bottorff, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

MBNA America Bank, National Association has filed an
application to register the mark DIRECT CONNECT for "non-
cellular and non-operator¹ assisted conference call
services, electronic mail services, and facsimile receipt

¹ Although as amended, the identification contained the term
"non-operated," applicant has subsequently referred to the term
as "non-operator," which we have adopted as being the correct
term.

and transmittal services offered exclusively to Applicant's bank credit card customers."²

Registration has been finally refused under Section 2(e)(1) of the Trademark Act on the ground that the mark, as intended to be used in connection with applicant's services, is merely descriptive thereof. The refusal has been appealed and both applicant and the Examining Attorney have filed briefs. No oral hearing was requested.

The Examining Attorney maintains that the mark DIRECT CONNECT is merely descriptive of applicant's offering of various telephone services to its credit card customers in which their calls are placed directly through applicant. He argues that the mark describes a principal feature of applicant's services, namely, that the services provide such a direct telephone connection. To support his arguments, the Examining Attorney has made of record a dictionary definition from *Newton's Telecom Dictionary* (14th ed.) of "direct connect" as "[a] term describing a customer hooking directly into a long-distance telephone company's switching office, bypassing the local phone company." He also relies upon three third-party registrations, two of which were made of record by applicant in connection with a

² Serial No. 75/372,369, filed October 14, 1997, based on an allegation of a bona fide intention to use the mark in commerce.

Section 2(d) refusal that was subsequently withdrawn. The third registration was the one cited as a bar under Section 2(d). The first two registrations show the disclaimer of the term "DIRECT CONNECT" when used in the mark DIRECT CONNECT AXSYS for "radiotelephone data communication interfaces"³ and the mark NEXTEL DIRECT CONNECT for "telecommunications services, namely, two-way radio communications."⁴ The cited registration for the mark DIRECT CONNECT for "telecommunication services, namely, operator assisted cellular telephone information and call placement services" issued on the Supplemental Register.⁵ The Examining Attorney argues that these registrations further demonstrate the descriptiveness of the terminology "direct connect" when used in connection with the practice of engaging in direct communications.

Applicant insists that the Examining Attorney is incorrectly assuming that applicant is in the telecommunications field and that the services being offered are in the nature of telecommunications services. Applicant contends that its customers would not have any familiarity with the definition found in the "obscure,

³ Registration No. 2,027,513, issued December 31, 1996.

⁴ Registration No. 2,236,098, issued March 30, 1999.

⁵ Registration No. 2,007,278, issued October 8, 1996.

highly specialized, technical dictionary" relied upon by the Examining Attorney and would have no reason to correlate such a definition with any of the particular services intended to be offered by applicant. Applicant further argues that the third party registrations are for different services and thus are irrelevant to the present issue of descriptiveness.

A term or phrase is merely descriptive within the meaning of Section 2(e)(1) of the Trademark Act if it immediately conveys information about a characteristic or feature of the goods or services with which it is being used or is intended to be used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Whether or not a particular term or phrase is merely descriptive is determined not in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the designation is being used, or is intended to be used, and the significance the designation is likely to have to the average purchaser as he or she encounters the goods or services bearing the designation, because of the manner in which it is used. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary that the term or phrase describe all the characteristics or features of the goods or services in

order to be merely descriptive; it is sufficient if the term or phrase describes one significant attribute thereof. See *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

We find the evidence being relied upon by the Examining Attorney fully adequate to establish that the term "direct connect" has a recognized connotation in the telecommunications field and that that connotation would be applicable to the telephone services which applicant intends to offer to its credit card customers under the mark DIRECT CONNECT. We consider the definition found for the term "direct connect" in a trade dictionary to be completely reliable evidence of the connotation of the term when used in the telecommunications field.⁶ The term is used when there is a direct linkage between the customer and the long-distance services, with no intermediate stop at the local level. Applicant's services, as identified, cover this type of telecommunication service, a direct,

⁶ The fact that the dictionary is in its fourteenth edition belies applicant's argument that it is an obscure publication. Further, we must assume that persons engaging telecommunication services would have some familiarity with the terms used in connection therewith, especially a term which so obviously refers to a "direct connection."

non-operator assisted linkage to conference calls, e-mail or facsimile services, all of which may be long distance.⁷

Furthermore, the third-party registrations being relied upon by the Examining Attorney show that the term "direct connect" has descriptive significance when used with a variety of telecommunication services which entail a direct connection, whether involving two-way radios, cellular phones, or radiotelephone interfaces. Thus, we are convinced that potential customers for applicant's various services, which clearly include telecommunications services and which involve a non-operator-assisted linkage between the customer and the proffered service, would immediately grasp the informational significance of the term DIRECT CONNECT. Its function as a descriptor of the "direct connect" feature of applicant's services would be obvious.

Accordingly, we find that the term DIRECT CONNECT would be merely descriptive, if it were used as intended by applicant, of the non-cellular and non-operator assisted conference call services, electronic mail services, and facsimile receipt and transmittal services which are to be

⁷ We note that in its original recitation of services, applicant even specifically included international and domestic long distance calls.

Ser No. 75/372,369

offered exclusively to Applicant's bank credit card customers.

Decision: The refusal to register under Section 2(e)(1) is affirmed.

Ser No. 75/372,369